

## **PREFACE**

**(As amended 12/1/2024)**

Attorneys unfamiliar with Kansas bankruptcy practice may find some helpful information in this preface to the *Local Rules of the United States Bankruptcy Court for the District of Kansas*.

### **1. Background**

The Bankruptcy Code consists of amendments to the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, Title I, § 101, 92 Stat. 2549, enacted into law November 6, 1978, effective October 1, 1979. Since its enactment, Congress has amended this law many times, most significantly with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 106, 119 Stat. 23.

In 1982, the Supreme Court declared the jurisdictional support for the 1978 Act unconstitutional in *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). It did so because 28 U.S.C. § 1471(c) of the 1978 Act invested non-Article III bankruptcy courts with powers exercisable only by Article III courts.

After *Marathon*, the bankruptcy system operated under an Emergency Rule promulgated by the Judicial Conference of the United States until 1984, when Congress enacted corrective legislation in the form of 28 U.S.C. § 1334, which currently states:

- (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
- (b) Except as provided in subsection(e)(2) [dealing with claims that involve construction of the statute governing employment of professionals in a bankruptcy case], and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

Hoping to cure the constitutional infirmity, Congress also declared that bankruptcy judges would “constitute a unit of the district court to be known as the bankruptcy court for that district.” 28 U.S.C. § 151.

To transfer the bankruptcy power to the bankruptcy courts, the 1984 amendments provided, through 28 U.S.C. § 157(a) that, “[e]ach district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.”

In Kansas, 28 U.S.C. § 157(a) was implemented by a Standing Order dated August 1, 1984 (effective July 10, 1984), stating:

### **STANDING ORDER**

Pursuant to Sec. 104 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, 28 U.S.C. Sec. 157, this court refers all cases under Title 11, and any and all proceedings arising under Title 11, or arising in or related to a case under Title 11, to the bankruptcy

judges for the District of Kansas, for consideration and resolution consistent with the law. The court recognizes the exception contained in Sec. 157(b)(5).

IT IS HEREBY ORDERED that the Bankruptcy judges for the District of Kansas be and they hereby are directed to exercise the authority and responsibilities conferred upon them by the Bankruptcy Amendments and Federal Judgeship Act of 1984.

IT IS FURTHER ORDERED, effective as of July 10, 1984, that any and all cases under Title 11, and any and all proceedings arising under Title 11, be and hereby are referred to the bankruptcy judges of the District of Kansas for consideration and resolution consistent with the law.

Dated this 1st day of August, 1984.

In 2011, the landscape of bankruptcy court jurisdiction was again considered by the Supreme Court in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). In *Stern*, the Supreme Court reasoned that, although 28 U.S.C. § 157(a) authorizes bankruptcy judges to adjudicate cases that arise under, arise in, or are related to a case under Title 11, Article III of the U.S. Constitution requires final judgments in some types of matters to be issued by an Article III district court judge who has life tenure and salary protection.<sup>1</sup>

Specifically, the Court concluded that a counterclaim for tortious interference with a gift asserted by a debtor against a creditor must be resolved by a judge appointed under Article III, and that the “public rights” exception that allows some types of claims to be adjudicated in non-Article III forums did not bring the counter-claim within the bankruptcy court’s permissible jurisdiction because the counterclaim did not stem from the bankruptcy itself and would not necessarily be resolved in the course of the claims allowance process of bankruptcy.

On June 24, 2013, to address the Supreme Court’s holding in *Stern*, the United States District Court for the District of Kansas issued an amended standing order of reference, which states:

Standing Order No. 13-1

Pursuant to 28 U.S.C. § 157(a), any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 are referred to the bankruptcy judges for this district.

If a bankruptcy judge or district judge determines that entry of a final order or judgment by a bankruptcy judge would not be consistent with Article III of the United States Constitution in a particular proceeding referred under this Rule, the bankruptcy judge shall, unless otherwise ordered by the district court, hear the proceeding and submit proposed findings of fact and conclusions of law to the district court. The district court may treat any order of the bankruptcy court as proposed findings of fact and conclusions

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<sup>1</sup> The Supreme Court later concluded, in *Wellness International Network, Ltd. v. Sharif*, 575 U.S. 665, 686 (2015), that “Article III permits bankruptcy courts to decide *Stern* claims submitted to them by consent.”

of law in the event the district court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III of the Constitution.

IT IS SO ORDERED.

Dated this 24th day of June, 2013.

District Court Standing Order 13-1 was incorporated into D. Kan. Rule 83.8.5(c) on March 17, 2014, and related updates were contemporaneously made to Rules 83.8.6 through 83.8.9. As a result, in a bankruptcy case where final judgment in a particular matter must be entered by a district court judge, D. Kan. Rule 83.8.5(c) provides that a bankruptcy judge may hear the matter and issue proposed findings of fact and conclusions of law for the district court to review and enter a final order or judgment. In a case where the bankruptcy court issues a decision in the form of an order but the U.S. Constitution requires final judgment to be entered by the district court, D. Kan. Rule 83.8.5(c) resolves the issue by stating that the bankruptcy court order will be construed as proposed findings of fact and conclusions of law for the district court to review and enter a final order or judgment. This approach was approved by the Supreme Court in *Executive Benefits Insurance Agency v. Arkison (In re Bellingham Insurance Agency, Inc.)*, 573 U.S. 25 (2014). It was then codified by the addition of Fed. R. Bankr. P. 8018.1 (Dec. 1, 2018.)

## **2. Hierarchy of Rules.**

The following hierarchy of rules underlie and aid the application of the Bankruptcy Code:

- The Federal Rules of Civil Procedure
- The Federal Rules of Evidence
- The Federal Rules of Bankruptcy Procedure
- The Rules of Practice and Procedure of the United States District Court for the District of Kansas
- Local Rules of the United States Bankruptcy Court for the District of Kansas and Official Local Bankruptcy Forms
- Bankruptcy Court Standing Orders
- Procedural Guidelines of Individual Bankruptcy Judges

The Federal Rules of Civil Procedure apply in bankruptcy adversary proceedings through Part VII of the Federal Rules of Bankruptcy Procedure, and in contested matters through Part IX of the Federal Rules of Bankruptcy Procedure.

Rule 101 of the Federal Rules of Evidence applies those rules to “proceedings in United States courts,” and Rule 1101 of the Federal Rules of Evidence specifically applies the rules to proceedings before United States bankruptcy judges and all “civil cases and proceedings, including bankruptcy.”

Next in the hierarchy are the Federal Rules of Bankruptcy Procedure. They find their source in 28 U.S.C. § 2075, which provides, in pertinent part:

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

Next are the local rules of the courts of this district. Rule 83(a)(1) of the Federal Rules of Civil Procedure permits district courts to enact local rules:

After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice. A local rule shall be consistent with—but not duplicate—federal statutes and rules adopted under 28 U.S.C. §§ 2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments must, on their adoption, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.

(Emphasis added).

Accordingly, in Kansas the district court has enacted The Rules of Practice and Procedure of the United States District Court for the District of Kansas to assist litigants.

Rule 9029(a)(1) of the Federal Rules of Bankruptcy Procedure authorizes the district court to adopt local rules relating to bankruptcy:

(1) ***By District Courts.*** Each district court, acting by a majority of its judges, may make and amend rules governing practice and procedure in all cases and proceedings within its bankruptcy jurisdiction. Fed. R. Civ. P. 83 governs the procedure for adopting local rules. The rules must:

- (A) be consistent with—but not duplicate—federal statutes and these rules;
- (B) not prohibit or limit using Official Forms;<sup>2</sup> and
- (C) conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) ***Delegating Authority to the Bankruptcy Judges.*** A district court may—subject to any limitation or condition it may prescribe and Fed. R. Civ. P. 83—authorize the district's bankruptcy judges to do the same.

To effectuate Federal Rule of Bankruptcy Procedure 9029, Rule 83.8.12 of the Rules of Practice and Procedure of the United States District Court provides: "The Bankruptcy Court may adopt supplemental Local Rules not inconsistent with these District Court Rules, the Bankruptcy Rules, or Title 11 or Title 28 of the United States Code."

The Local Rules of the United States Bankruptcy Court for the District of Kansas flow from the outlined authorities and the efforts of the Bankruptcy Bench Bar Committee, which

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<sup>2</sup> Rule 9009 of the Federal Rules of Bankruptcy Procedure governs the promulgation of Official Bankruptcy Forms. ("The Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by these rules, the form itself, or the national instructions for a particular official form.")

periodically reviews and recommends revisions to the bankruptcy rules. Bankruptcy Court Standing Orders primarily supplement the rules on administrative issues. Many official local bankruptcy forms, such as the Chapter 13 Plan form, were previously appended to specific local rules or Standing Orders. In 2022, those forms were moved to a consolidated forms section within the local rules. The court has also created other forms that are authorized by the local rules (*see, e.g.*, LBR 1007.1 and LBR 9036.1). All of the local forms are available on the court's website.

Procedural Guidelines of Individual Bankruptcy Judges are also published to aid attorneys on procedural matters when practicing before a particular judge. Attorneys may obtain the guidelines of a particular judge from the Deputy Clerk where the judge presides.

The Rules, Standing Orders, and Procedural Guidelines can also be electronically accessed through the court's website, [www.ksb.uscourts.gov](http://www.ksb.uscourts.gov), and through PACER.

### **3. Applicability of District Court Local Rules**

The bankruptcy court is a unit of the district court and these rules merely supplement the district court rules. This means attorneys in bankruptcy proceedings must follow the district court rules relating to bankruptcy (D. Kan. Rules 83.8.1 through 83.8.13) and, where applicable, the other district court rules. District of Kansas Rules 83.8.1 through 83.8.13 are devoted to bankruptcy topics on withdrawal of reference, removal, abstention, jury trial, and appeal of bankruptcy cases from the Bankruptcy Court to the 10th Circuit Bankruptcy Appellate Panel or the United States District Court.

Finally, attorneys who are not admitted to practice before the federal courts in Kansas must carefully note and follow District of Kansas Rules 83.5.1 through 83.6.12 on the responsibility, registration, appearance, and withdrawal of counsel.